

DRAFT – November 8, 2021

Applicable Law – Public Nuisance – Introduction

I will now instruct you on the elements of Plaintiffs’ public nuisance claims.

Each Plaintiff alleges that each Defendant dispensed opioid products in a manner that endangered public health or safety, thereby creating a public nuisance. Specifically, each Plaintiff claims that each Defendant substantially contributed to an oversupply of legal prescription opioids, and to diversion of those opioids into the illicit market outside of appropriate medical channels, thereby endangering public health or safety.

Let me define for you the legal term “*public nuisance*.” A “public nuisance” is an unreasonable interference with a right held by the public in common that is ongoing today. A public nuisance includes an unreasonable interference with public health or public safety.

A right common to the general public is a right or an interest that belongs to the community-at-large. It is a right that is collective in nature. A public right is different from an individual right that everyone has, like the right not to be assaulted or defrauded. It is more than an aggregate of private rights by a large number of injured people.¹ For a Defendant to be held liable for creating a public nuisance, a Plaintiff must show, by the greater weight of the evidence, that the Defendant did one or both of the following two things:

1. The Defendant engaged in *intentional conduct* that caused a significant and ongoing interference with a public right to health or safety; or
2. The Defendant engaged in *unlawful conduct* that caused a significant and ongoing interference with a public right to health or safety.

Please remember that you are being asked to determine only whether one or more of the Defendants created a public nuisance. You are not being asked to determine whether there should

¹ State of Oklahoma v. Johnson & Johnson, 2021 OK 54, ¶ 24 (Okla. Nov. 9, 2021) (“[A] public right is more than an aggregate of private rights by a large number of injured people.” (citing, *inter alia*, Restatement (Second) of Torts § 821B cmt. g)).

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be a remedy for this claim, or what that remedy should be. If you find that one or more of the Defendants created a public nuisance, the Court will determine the remedy.